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HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 397

ARTHUR N. FIELD, AS TEMPORARY RECEIVER OF THE PROPERTY AND ASSETS OF UNITED GREEK SHIP-OWNERS CORPORATION,

Petitioner,

against

THE UNITED STATES,

Respondent

PETITION AND BRIEF FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

GEORGE HALPERN,
Attorney for Petitioner.

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HAROLD D. SAFIR,
Of Counsel.

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No. 397

ARTHUR N. FIELD, AS TEMPORARY RECEIVER OF THE PROPERTY AND ASSETS OF THE UNITED GREEK SHIPOWNERS CORPORATION,

Petitioner,

against

THE UNITED STATES,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner herein, Arthur N. Field, as Temporary Receiver of the property and assets of the United Greek Shipowners Corporation, respectfully prays that a writ of certiorari issue to review an order and judgment of the Court of Claims of the United States dismissing, upon defendant's motion, his petition filed in that Court on the ground that the said petition in the Court of Claims did not state a claim over which that Court had jurisdiction.

The Opinion Below

The opinion of the Court of Claims of the United States (R. 38) dismissing the plaintiff's petition was rendered by Littleton, J., and was filed on July 13, 1953. This opinion is not yet reported.

Jurisdiction

Jurisdiction to issue the writ requested is provided in the Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U. S. C. A. Section 1255 (1).

Statutes Involved

The statutes involved are: the Court of Claims Act of June 25, 1948, c. 646, 62 Stat. 940, 28 U. S. C. A. 1491; Suits in Admiralty Act of March 9, 1920, c. 95, 41 Stat. 525, 46 U. S. C. A. 741 et seq.; Tucker Act of June 25, 1948, c. 646, 62 Stat. 933, amended April 25, 1949, c. 92, 63 Stat. 62; May 24, 1949, c. 139, § 80 (a, b), 63 Stat. 101, 28 U. S. C. A. 1346.

Questions Presented

The questions presented are:

1. Are claims for losses covered by marine hull insurance policies written by the United States as insurer, claims "founded upon an express or implied contract with the United States" within the meaning of Title 28 U. S. C. A. § 1491 granting jurisdiction to the Court of Claims.

2. Does the Suits in Admiralty Act grant exclusive jurisdiction to the district courts of the United States with respect to *any and all* claims against the United States of a marine nature so as to preclude the bringing in the Court of Claims of such claims on the said marine hull insurance contracts.

3. Does the Suits in Admiralty Act apply to actions against the United States in its capacity as a marine in-

surer as distinguished from its capacity as a shipowner, or operator, or cargo carrier.

4. Is the Suits in Admiralty Act applicable to suits on insurance contracts written by the United States as insurer on vessels owned by a foreign power, flying a foreign flag and operated for such foreign power by a Delaware corporation.

Summary Statement of Matters Involved

The petitioner herein, the plaintiff below, is the Temporary Receiver of United Greek Shipowners Corporation, a Delaware corporation, appointed by the Supreme Court of the State of New York (R. 1) to sequester the assets of this Corporation pursuant to the provisions of Section 977(b) of the Civil Practice Act of the State of New York. As such Receiver, the petitioner instituted the instant case to remover monies due from the United States to the said Corporation pursuant to the provisions of certain marine hull insurance policies written by the United States in favor of United Greek Shipowners Corporation (R. 2, 3; Supp. Record, Exh. A). The claims for these monies are contained in the first Nineteen causes of action stated in the petition filed in the Court of Claims (R. 1-13).

The policies in question had been written by the United States to indemnify the Corporation against losses with respect to some sixteen vessels. The said vessels had been bareboat chartered by the United States to the Greek Government and operated by United Greek Shipowners Corporation as agent for the said Royal Greek Government (R. 2, 16, 35-37). All of said vessels flew the Greek flag (Supp. Record, Exh. A, p. 1).

Pursuant to the provisions of the said insurance contracts, general and particular average statements fixing the amount of the losses sustained by United Greek Shipowners Corporation were cast up and the amounts due from the

United States to the assured named in the policies were determined (R. 2-4). The amounts so found to be due, and alleged by the petitioner herein to be due and payable to him as Receiver of United Greek Shipowners Corporation, is $345,506.69 (R. 3, 4, 11).

Dismissal below of other claims, stated as causes of action numbered "Twentieth" through "Twenty-Third" in the petition filed in the Court of Claims, is not disputed at this time.

The Decision Below

The court below rested its dismissal of the petition therein on the sole ground that *any* cause possibly cognizable on the admiralty side of the court must be brought in the district court under the Suits in Admiralty Act. It was stated in its opinion below:

> "* * * we are of the opinion that plaintiff's action is based on maritime contracts and is therefore a proceeding in Admiralty and must, under the provisions of the Suits in Admiralty Act, be brought in the United States district courts. The Suits in Admiralty Act of 1920 withdrew from this court jurisdiction in such cases and vested exclusive jurisdiction thereof in the United States district courts."

Reasons for Allowance of Writ

I

The Court of Claims has decided important questions of federal law which have not been, but should be, settled by this Court.

Although thirty-three years have elapsed since the passage of the Suits in Admiralty Act, the respective jurisdictional provinces of the district courts and the Court of Claims under the terms of the Suits in Admiralty and the Public Vessels Acts on the one hand, and the Tucker and

Court of Claims Acts on the other hand, are still confused and unsettled.

As is demonstrated in petitioner's brief, decisions of this Court construing to the said Acts have been interpreted as being in conflict with each other. Numerous decisions of the Courts of Appeals are in conflict with authoritative decisions of the Supreme Court and holdings of the Court of Claims are in conflict with each other and with various decisions of each of the other Courts.

II

The Court of Claims has rendered a decision in conflict with the decisions of United States Courts of Appeals on the same matter, in the following respects:

The Act of June 25, 1948, c. 646, 62 Stat. 940, Title 28 U. S. C. A. § 1491, provides that the Court of Claims shall have jurisdiction of any claim against the United States "founded upon any express contract" or for damages liquidated or unliquidated in cases not sounding in tort.

Likewise, the Tucker Act, as amended (Act of June 25, 1948, c. 646, 62 Stat. 933, Title 28 U. S. C. A. § 1346) still provides for jurisdiction in the district courts *concurrent* with the Court of Claims up to $10,000.00, *in any civil action against the United States* "upon any express contract" with the United States or for liquidated or unliquidated damages in cases not sounding in tort.

Obviously, the instant claims upon express contracts of insurance are specifically covered by these jurisdictional grants to the Court of Claims.

The Court of Appeals for the Second Circuit, in holding that the district court had jurisdiction over maritime causes under the Tucker Act in: *Eastern Transportation Co.* v. *United States,* 159 F. 2d 349, 350 (1947); *The Everett Fowler,* 151 F. 2d 662, 664 (1945); and *Admiral Oriental*

Line v. *United States,* 86 F. 2d 201, 203-204 (1936), necessarily held also that *some* maritime causes were concurrently maintainable in the Court of Claims. By the same token, had the said maritime causes exceeded $10,000 in amount, the jurisdiction of the Court of Claims would have been exclusive. *United States* v. *Tacoma Oriental Line,* (9 Cir., 1936), 86 F. 2d 363, 369.

The decision below holds that *any* claim based on a maritime contract "must" be brought in the district courts. This is clearly irreconcilable with the above decisions of said Courts of Appeals.

III

The Court of Claims has rendered a decision in conflict with the decision of a United States Court of Appeals on the same matter in the following respect. In *United States* v. *Caffey,* 141 F. 2d 69, the Court of Appeals for the Second Circuit held that the Public Vessels Act (and by necessary inference the same would be true of the Suits in Admiralty Act) did not apply to a vessel which was bareboat owned by a foreign government and operated by its agent under its own flag. The same situation is present herein.

IV

The Court below has decided a federal question in a way probably in conflict with applicable decisions of this Court in holding that *no* maritime cause is maintainable in the Court of Claims.

In *United States* v. *Atlantic Mutual Ins. Co.,* 298 U. S. 483, 489-490 (1935), the latest decision of this Court quadrating the question sub judice, it was expressly held that the Court of Claims has jurisdiction to determine a maritime claim based upon contract.

In 1949, in *Alcoa Steamship Co.* v. *United States,* 338 U. S. 421, this Court also had before it a marine contract

claim brought under the Tucker Act. The district court, the Court of Appeals for the Second Circuit, as well as this Court, all retained jurisdiction thereof under the said Act. As noted above, the existence of jurisdiction under the Tucker Act in the district court is likewise conclusive of concurrent jurisdiction in the Court of Claims over such maritime causes.

In arriving at a contrary conclusion herein, the Court of Claims cited *De La Rama Steamship Co.* v. *United States*, 344 U. S. 386. Clearly, the decision of this Court in *De La Rama* was not support for the conclusion arrived at by the Court of Claims herein. In *De La Rama* this Court decided that in a suit on a policy under the War Risk Insurance Act [the policies in suit were issued under Section 10 of the Merchant Marine Act of 1920 (Supp. Record, Exh. A, p. 1)] the repeal of the War Risk Insurance Act did not repeal the jurisdiction of the Court which had been preserved by the provisions of the General Savings Statute. The War Risk Insurance Act by *express* provision granted jurisdiction over suits thereunder to the district courts under the Suits in Admiralty Act. In reversing such judgment below, this Court made its decision on entirely different grounds than those considered by the Court of Appeals, leaving what the Court of Appeals stated concerning maritime causes as presumably good law. There, the Court of Appeals expressly declared that in suits on marine insurance contracts the Court of Claims had jurisdiction.

It appears from this Court's opinion in *De La Rama* that not only did the Government so argue but this Court agreed that were it not for the express provisions of the War Risk Insurance Act relegating claims thereunder to the district courts, such action upon a marine insurance contract was maintainable in the Court of Claims, 344 U. S. 386.

Accordingly, the holding of the court below decided a federal question in a manner contradictory of the foregoing decisions of this Court.

Conclusion

Wherefore, it is respectfully prayed that this petition for writ of certiorari to the Court of Claims be granted.

Dated: New York, N. Y., October 8, 1953.

Respectfully submitted,

ARTHUR N. FIELD,
as Temporary Receiver of the property and assets of the United Greek Shipowners Corporation,
Petitioner.

GEORGE HALPERN,
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ARTHUR N. FIELD, as Temporary Receiver of the property and assets of the UNITED GREEK SHIPOWNERS CORPORATION,

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against

THE UNITED STATES,

Respondent.

BRIEF IN SUPPORT OF PETITION

Opinion Below

The opinion of the Court of Claims of the United States (per Littleton, J.) is not yet reported but is set forth in the Transcript of Record (R. 38).

Jurisdiction

The jurisdiction of this Court is invoked under Title 28 U. S. C., Section 1255.

Statement of the Case

The facts have been stated in the petition.

Specification of Errors Assigned

The Court below erred:

1. In holding that it had no jurisdiction to entertain the claims stated in the petition to that Court.

2. In failing to hold that it had jurisdiction under the Court of Claims Act and/or the Tucker Act of the claims stated in the petition.

3. In holding that the Suits in Admiralty Act divested the Court of jurisdiction under the Court of Claims and/or Tucker Acts of the cause herein.

Summary of Argument

In the instant case the Government has entered upon a conventional commercial endeavor, namely, the insurance business, and has been paid more than $2,000,000. in insurance premiums with respect to the vessels insured under the policies in suit. It now seeks to avoid payment for actual losses under such policies in the sum of approximately $345,000. This, despite the fact that in November, 1951, after the two-year statute of limitations of the Suits in Admiralty Act had long since run, it acknowledged that it was processing the claims herein administratively for settlement and payment (R. 2, 3, Appx. A). In the Court below the Government successfully urged in avoidance of these just obligations, fairly undertaken and handsomely profitable, that the Court of Claims had no jurisdiction to entertain these claims. In so urging, respondent dons the cloak of a shipowner to disguise its status as an insurer.

In support of this writ the following is urged:

I. The divers decisions of numerous federal courts with respect to a federal question have created a jurisdictional chaos which requires settlement by this Court.

II. The decision below is in conflict with the decisions of United States Courts of Appeals with respect to the jurisdiction of the Court of Claims in the light of the provisions of the Tucker Act and the Suits in Admiralty Act.

III. The holding below is in conflict with the decision of a United States Court of Appeals with respect to the application of the Suits in Admiralty Act to a vessel owned by a foreign sovereign.

IV. Whatever jurisdiction may have been removed from the Court of Claims by the Suits in Admiralty Act of 1920, if any, was restored to that court on the reenactment of the Court of Claims Act in 1948.

V. The court below has decided a federal question in a way probably in conflict with applicable decisions of this Court.

VI. The reliance below upon *Calmar Steamship Corp.* v. *United States*, 345 U. S. 446 and *De La Rama Steamship Co.* v. *United States*, 344 U. S. 386, in dismissing the petition below was erroneous.

Argument

I

The enactment of the Suits in Admiralty Act of March 9, 1920, c. 95, 41 Stat. 525, 46 U. S. C. A. 741 et seq., and the Public Vessels Act of March 3, 1925, c. 428, 43 Stat. 1112, 46 U. S. C. A. 781, on the one hand, alongside the Tucker Act of June 24, 1948, c. 646, 62 Stat. 933, amended April 25, 1949, c. 92, 63 Stat. 62, Mary 24, 1949, c. 139, § 80(a, b), 63 Stat. 101, 28 U. S. C. A. 1346, and the Court of Claims Act of June 25, 1948, c. 646, 62 Stat. 940, 28 U. S. C. A. 1491, has created jurisdictional boundaries so approximating one another that the federal courts to this day have been unable effectively to separate them. Under the provisions of the said Acts claims of a marine nature may be brought in the Court of Claims pursuant to the Court of Claims Act and/or the Tucker Act. Similarly, under the provisions of the Suits in Admiralty Act or the Public Vessels Act certain maritime causes are maintainable in the district courts.

From the cases it is clear that the purposes of the Suits in Admiralty Act were to forbid the seizure of the vessel or cargo owned, operated or possessed by the Government when such vessel or cargo is owned and operated as a merchant and to give the claimant against either the vessel or the cargo a right to sue the Government *in personam* to recover upon such claim. *Calmar Steamship Corp.* v. *United States,* 345 U. S. 446, marginal note 6; *United States* v. *Australia Star,* 172 F. 2d 472, 477.

From the Congressional discussions relative to the enactment of the Suits in Admiralty Act, it appears that the Congress was fully aware that there was jurisdiction in the Court of Claims over certain types of marine causes, e.g. contract claims, general average and others. Nowhere in the legislative history of this Act is there any evidence of Congressional intention to divest the Court of Claims of its jurisdiction over causes, marine or otherwise, where the Government would *not* be liable if it were a private shipowner or operator. *Matson Navigation Company* v. *United States,* 284 U. S. 352 (1932) and *Johnson* v. *United States Shipping Board Emergency Fleet Corp.,* 280 U. S. 320 (1930), wherein claims were asserted against the United States in its capacity as shipowner or ship operator, or in which the vessels were operated "for the United States", it was stated by the Court that the desired uniformity (accomplished by the Suits in Admiralty and Public Vessels Acts) would not be had if suits under the Tucker Act were allowed against the United States on maritime causes *covered by the Act* (the Suits in Admiralty Act. These decisions did not preclude suits in the Court of Claims with respect to claims *not* covered by the Suits in Admiralty Act and divergence between the decisions of the Supreme Court was not created by the later decisions of this Court in *United States* v. *Atlantic Mutual Insurance Company,*

298 U. S. 483 (1935) and *Alcoa Steamship Company* v. *United States,* 338 U. S. 421 (1949), wherein was sustained the jurisdiction over marine-sounding contract claims brought under the Tucker Act.

These decisions were followed in the 2nd and 9th circuits by *Eastern Transportation Co.* v. *United States,* (CA 2), 159 F. 2d 349 (1947); *The Everett Fowler* (CA 2), 151 F. 2d 662 (1945), cert. den'd. 327 U. S. 804; *Admiral Oriental Line* v. *United States,* (CA 2), 86 F. 2d 201 (1936); and *United States* v. *Tacoma Oriental Line,* (CA 9), 86 F. 2d 363, (1936). Although each arose in the district court, the holding in each of jurisdiction under the Tucker Act was necessarily a holding of concurrent jurisdiction in the Court of Claims.

Contrary to these rulings, the court in both *Eastern Steamship Lines Inc.* v. *United States,* (CA 1), 187 F. 2d 956, 969 (1951) and in *Thomason* v. *United States,* (CA 9), 184 F. 2d 105, 108 (1950), held that the Suits in Admiralty and Public Vessels Acts provide exclusive jurisdiction in marine causes and that the district courts and the Court of Claims have been divested of such marine jurisdiction as they were previously thought to have had under the Tucker Act. Thus, if there was no inconsistency between the respective holdings of the Supreme Court above referred to, such has in fact been created by such opposite holdings of the Courts of Appeals.

As the Courts of Appeals have now interpreted the previous decisions of the Supreme Court, there is not only a conflict between the decisions in *Matson* and *Johnson,* on the one hand, and *Atlantic Mutual* and *Alcoa,* on the other, but, also, necessarily between the holdings in *Matson* and *Eastern Transportation Co.,* etc., and between *Atlantic Mutual* and *Thomason.*

To make matters worse, the Court of Claims in *Sanday*

& Co. v. *United States,* (1932) 76 Ct. Cl. 370, held that the Suits in Admiralty Act had divested the Court of Claims of its previous jurisdiction over marine claims. The holding of the Supreme Court in *United States* v. *Atlantic Mutual Insurance Company,* supra, might normally have been thought to have overruled the holding in *Sanday* but the decision below in the case sub judice necessarily ignores this Court's holding in *United States* v. *Atlantic Mutual Insurance Company.*

If it be assumed that the Court of Claims is consistent at least within itself and is firm in its holding that it has no jurisdiction over claims of a marine nature, this too is in error. Thus, *Eastern Steamship Lines, Inc.* v. *United States,* 112 F. S. 167, —— Ct. Cl. ——, decided May 5, 1953, was under consideration by the same court at the same time as the case sub judice. In a case whose facts are exactly like those in *Matson Navigation Co.* v. *United States,* supra, jurisdiction was assumed and a judgment granted against the United States.

So, too, with respect to salvage. When the subject was before the Congress that enacted the Suits in Admiralty Act it was expressly stated that the Court of Claims had jurisdiction over salvage claims. It is not, therefore, surprising that in 1921, a year after the passage of the Suits in Admiralty Act, in *The Progressive,* 275 Fed. 360, it was held that the district court had jurisdiction, but under the Tucker Act. Implicit in this holding, of course, is the corollary-concurrent jurisdiction in the Court of Claims.

On the other hand, in 1952, in the same district court, jurisdiction over a salvage claim against the United States was retained, not on the basis of the Tucker Act, but under the Suits in Admiralty Act, thus denying jurisdiction of such a cause in the Court of Claims. *Greene* v. *United States* 104 F. S. 667 (SDNY).

Again, in *American President Lines* v. *United States,* 75 F. S. 110, *Alcoa Steamship Company, Inc.* v. *United States,* 80 F. S. 158 and *N. S. Byoness Son Dampskibsrederi Aktieselskab* v. *United States,* 298 Fed. 123, each of the courts held that where the vessel was not owned or operated by an agency of the United States, suit under the Suits in Admiralty Act was precluded because the "for the United States" contained in that Act did not refer to a situation in which cargo of the United States was being carried, but to one in which the United States was operating the vessel through an agent who operated the vessel "for the United States". Suit upon such claims was therefore held to be properly brought in the district court under the Tucker Act or under the same Act in the Court of Claims. However, in *Calmar Steamship Corporation* v. *United States,* 345 U. S. 446, it was assumed, without decision on this point, that a privately owned steamship carrying cargo of the United States was employed "for the United States", with the necessary result referred to in the decision that jurisdiction under the Suits in Admiralty Act was exclusive of that of the Court of Claims.

Obviously, with such diverse holdings there is no certain manner of determining a proper forum for such claims, nor even when suit may safely be withheld for amicable negotiation. This confusion has persisted and grown over a period of 33 years with serious adverse results to many litigants with otherwise *bona fide* and meritorious claims. The time is ripe for a decision of this Court that will settle this question at long last.

II

Necessarily, as the result of what has been said above, the holding below that there is no jurisdiction over the claim in suit because it was based upon a marine contract, was in direct conflict with the decisions of the Court of Appeals

for the Second Circuit in *Eastern Transportation Company* v. *United States,* 159 F. 2d 349 (1947), *The Everett Fowler,* 151 F. 2d 662 (1945), and *Admiral Oriental Line* v. *United States,* 86 F. 2d 363. The decision of the court below was likewise in conflict with the decision of the Ninth Circuit in *United States* v. *Tacoma Oriental Line,* 86 F. 2d 363, which held, as in the Second Circuit, that the district courts and the Court of Claims have jurisdiction over marine claims under the provisions of the Court of Claims Act and the Tucker Act.

The decision below was also in conflict with the decision of the Court of Appeals for the First Circuit in *State of Maine* v. *United States,* 134 F. 2d 574 (1943), cert. dnd. 319 U. S. 772. There, in adopting the opinion below (45 Fed. Supp. 35), the court held that the Suits in Admiralty and Public Vessels Acts had been passed to provide an action against the United States for damage done by its vessels in such cases as the owners thereof would have been liable, had the vessels been privately owned. In short, that these Acts removed the defense of sovereign immunity and permitted suit against the United States in its capacity as shipowner or ship operator for damages caused by its vessels. The said decision below pointed out that these Acts did not create any causes of action under such Acts not previously maintainable against a private shipowner of operator. Since, at that time, the owner of a bridge damaged by a vessel could not sue the shipowner in admiralty, even if privately owned, the owner of the bridge could not sue the United States under the Suits in Admiralty Act.

By the same token, in the instant case, since the United States could not be liable upon the insurance policies in suit in its capacity as shipowner or ship operator, the Suits in Admiralty and Public Vessels Acts did not create any liability or grant any permission to sue the United

States in its capacity as underwriter of marine insurance. Were the Government a private shipowner, it would not be engaged in the insurance business. If it were an insurance company, it would not be a shipowner. In neither case, could there be such a seizure of a vessel by the assured as is sought to be prevented by these Acts.

The holding below, wherein by necessary implication it was stated that the Government could be liable under the Suits in Admiralty Act in a capacity as marine underwriter, wherein it could not have been liable "as a private shipowner", is in direct conflict with the ruling in the *State of Maine* case.

III

As has been noted, supra, the vessels covered by the policies on which this suit is based were vessels owned by the Greek Government, flew the Greek flag and were operated for the Greek Government by a Delaware corporation. As such they were not vessels to which the terms of the Suits in Admiralty Act could in any event apply inasmuch as they were not vessels "of the United States". The holding below that the Suits in Admiralty Act applied herein, created a variance between the Court of Claims and the Court of Appeals for the Second Circuit with respect to *United States* v. *Caffey,* 141 F. 2d 69 (1944), cert. den'd 323 U. S. 750, as well as with the tenor of this Court's decision in *J. Lauritzen* v. *Larsen,* 345 U. S. 571.

The facts in the *Caffey* case, though that case arose under the Public Vessels Act, were on all fours with the relevant facts herein. It is not important here that that case arose under the Public Vessels Act rather than the Suits in Admiralty Act for the two Acts are *in pari materia,* are to be read together in order that the intended uniformity of purpose might be accomplished.

In the *Caffey* case, as in the instant case, only naked title

to the vessels was in the United States. The bareboat ownership of the vessels in both cases had been demised to a foreign power. In both cases the foreign power had selected its own agent to operate the vessels; in the *Caffey* case it was the British Navy and in the instant case it was the United Greek Shipowners Corporation.

In the Caffey case it was held that the Public Vessels Act could not be applied to a vessel controlled and operated by a government other than the United States and that in order for the Public Vessels Act to have applied in that case it was necessary that the vessels be actually owned or controlled by the United States. The following language (141 F. 2d 69, 71-72) is so pointed as to make the argument by itself:

> "The Archer not being a vessel controlled as the statute required at the time the alleged cause of action arose and therefore not a public vessel of the United States within the Public Vessels Act no cause of action upon which the United States has consented to be sued has been alleged, and the District Court is without jurisdiction".

Furthermore, to hold the contrary, would afford a measure of extraterritoriality to statutes of the United States which this court has clearly disapproved in the recent decision of *J. Lauritzen* v. *Larsen,* supra.

The error below is thus clearly manifested by its unfounded holding of lack of jurisdiction herein.

IV

Even were it assumed arguendo, that the claims stated in the petition might have been precluded by the Suits in Admiralty Act as interpreted by decision prior to 1948, the re-enactment that year of both the Tucker and Court of Claims Acts in language so unambiguous and free from doubt leaves no choice but to regard such language as the

final expression of the legislative intent. *Caminetti* v. *United States,* 242 U. S. 470, 490.

In 1948, subsequent to the enactment of the Suits in Admiralty Act, the previous Acts of Congress with respect to the Court of Claims' jurisdiction were repealed and the jurisdiction of the Court of Claims was stated by Congress in its new and present form. 28 U. S. C. A., Section 1491, Act of June 25, 1948, c. 646, 62 Stat. 940.

This statute now provides:

> "The Court of Claims shall have jurisdiction to render judgment upon *any claim* against the United States:
>
> • • • • • • •
>
> "4. Founded upon *any* express or implied contract with the United States; or
>
> "5. For damages liquidated or unliquidated in cases not sounding in tort." (Italics ours.)

The Tucker Act, as also re-enacted, Act of June 25, 1948, c. 646, 62 Stat. 933, provided:

> "(a) The district courts shall have original jurisdiction concurrent with the Court of Claims, of:
>
> • • • • • • •
>
> "(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, • • • upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

A statute which unequivocally states that this Court has jurisdiction of an action based on "any claim against the United States . . . founded upon any express . . . contract with the United States," cannot be validly "construed", as defendant claims, to read "any claim . . . founded upon an express . . . contract . . . with the

United States except those within the purview of the Suits in Admiralty Act," even assuming that express contracts of insurance issued by the Government could be deemed within the province of said Act.

V

In *United States* v. *Atlantic Mutual Insurance Co.*, 298 U. S. 483 (1935), the Supreme Court stated, at p. 490, in a general average case coming to it from the Court of Claims, as follows:

> "The United States is not suable without its assent, and therefore a suit *in personam* against it as the owner of the vessel needed the support of a permissive statute. But there is such a statute [28 U. S. C. 250 (1)], which has been long in force. It in direct terms invests the Court of Claims with jurisdiction to hear and determine all claims against the United States founded——
>
> 'upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable.'
>
> "It is under this statute that claims against the United States for general average contribution are brought and adjudicated in the Court of Claims. Obviously the statute contemplates that a claim may accrue and be sued on even though the damages sought be unliquidated."

In 1949, this Court passed upon *Alcoa Steamship Company Inc.* v. *United States*, 338 U. S. 421, another marine claim which had come to it from the Court of Appeals for the Second Circuit. In each of the three courts that passed

upon this case the jurisdiction of the court to determine this case under the Tucker Act was expressly noted.

As has been noted frequently already, the existence of jurisdiction under the Tucker Act in the district court is necessarily an acknowledgment of concurrent jurisdiction in the Court of Claims. Obviously neither of the said cases could have been so decided had the holding below herein that the Court of Claims has no jurisdiction over any marine cause, been the law. The finding of the court below therefore is in direct conflict with these two decisions of the Supreme Court.

The holding of the court below further contravenes the decisions of this court in *Matson Navigation Co.* v. *United States,* 284 U. S. 352 and *Johnson* v. *U. S. Shipping Board Emergency Fleet Corp.,* 280 U. S. 320. These latter two cases are cited by the court below in support of its holding. It is submitted that this flows from a misunderstanding of this Court's holdings in those cases by the court below. In those cases the Supreme Court held that the Suits in Admiralty Act created jurisdiction in the district court exclusive of any other court in those cases *arising under the Suits in Admiralty Act.* This is considerably different from a holding that the Suits in Admiralty Act created an exclusive jurisdiction over *all* marine causes in the district court. Were the decisions in the *Matson* and *Johnson* cases not limited to cases arising under the Suits in Admiralty Act, then these decisions must necessarily have been overruled by the later holdings of the Supreme Court in *United States* v. *Atlantic Mutual Insurance Co. and Alcoa Steamship Company* v. *United States, supra.* Clearly, such was not the case.

The Court of Claims' opinion, therefore, that the *Matson* and *Johnson* cases provided exclusive jurisdiction in the district courts in *any* marine case brought against the

United States was necessarily in conflict not only with the *United States* v. *Atlantic Mutual Insurance Co.* and the *Alcoa* cases, but also in conflict with the holdings of *Matson Navigation Co.* and *Johnson, supra.*

VI

Although the matter was not by any means in issue in *Calmar SS. Corp.* v. *United States,* 345 U. S. 446, cited by the court below, like the *Matson* and *Johnson* cases, can only be understood to be a case wherein the requirements of the Suits in Admiralty Act were all present; that is the United States was being sued with respect to the operation of a merchant vessel for the United States. Unlike the facts in *Calmar,* in the case sub judice the vessels covered by the policies in issue were owned by the Greek Government and operated for it, not for the United States, by a Delaware corporation and under the Greek flag. Furthermore, and even more important, the suit herein was not for damages or injury caused by a vessel operated by or for the United States. It was a suit against the United States in its capacity of a conventional commercial insurance carrier. As such, this was certainly not the type of claim that could have been brought against a private shipowner even had the vessels been privately owned. The suits in question would have been instead against an insurance company. *State of Maine* v. *United States,* 134 F. 2d 574, cert. den'd. 319 U. S. 772.

De La Rama Steamship Co. v. *United States,* 344 U. S. 386, 389-390, although cited by the lower court herein was likewise not authority for the proposition that the Suits in Admiralty Act created an exclusive marine jurisdiction in the district court. On the contrary, to the extent that that case has application at all, it is authority for the proposition that the Court of Claims has jurisdiction over suits upon

marine insurance policies. In *De La Rama* the court decided a suit upon a policy written under the War Risk Insurance Act of June 29, 1940, 54 Stat. 689, 690, as amended, 46 U. S. C. § 1128 (d). Unlike the policies in suit, the policies there written pursuant to the said War Risk Insurance Act were *expressly* required by that law to be litigated in the district court under the Suits in Admiralty Act.

In the Court of Appeals therein it was the contention of the Government that the repeal of the War Risk Insurance Act had repealed the jurisdiction of the district courts to hear a suit pursuant to such Act. In agreeing with this contention the Court of Appeals stated that the Court of Claims had jurisdiction over marine insurance policies pursuant to the provisions of the Court of Claims Act and the Tucker Act.

In reversing the decision of the Court of Appeals, this court did not disagree with the said holding of such court but reversed upon the ground that it was not necessary to remit the claimant to the Court of Claims because jurisdiction to determine the case was saved despite the repealer, by the provisions of the General Savings Statute, RS § 13, now 1 U. S. C. (Appx. 1) Section 109. What the Court of Appeals stated, therefore, with respect to the jurisdiction of the Court of Claims over such causes may still be presumed to be authoritative.

Conclusion

A Writ of Certiorari should be granted.

Dated: New York, N. Y., October 8, 1953.

Respectfully submitted,

GEORGE HALPERN,
Attorney for Petitioner.

HERBERT LEBOVICI,
HAROLD D. SAFIR,
Of Counsel.

APPENDIX "A"

U. S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
Washington 25, D. C.

November 23, 1951

Address Reply to

Maritime Administration
and refer to File No. —
SD1:442

United Greek Shipowners Corporation
44 Whitehall Street, New York 4, N. Y.
Attention: Mr. A. Hazabis.

Subject: Claims—Bareboat Out, Time Chartered Back Vessels to Greek Government.

Dear Sirs:

Reference is made to your conversation to-day with our Mr. T. E. Henderson relative to your letters dated November 8 and 20, 1951.

This will confirm Mr. Henderson's advices that we have received claims totalling $345,506.69 on vessels listed in the statement attached to your letter of November 8, 1951; however, while they have been partially processed for settlement, payment has been prevented pending the adjustment and settlement of lend-lease and other matters between the Greek and United States Governments.

Yours very truly,

B. K. OGDEN,
Chief,
Division of Insurance,
By (S.) T. E. HENDERSON,
Examiner,
Insurance Claims Branch.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 397

ARTHUR N. FIELD, AS TEMPORARY RECEIVER OF THE PROPERTY AND ASSETS OF UNITED GREEK SHIPOWNERS CORPORATION, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 38–40) is reported at 113 F. Supp. 190.

JURISDICTION

The judgment of the Court of Claims was entered July 13, 1953 (R. 38–40). The petition for a writ of certiorari was filed on October 9, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

Whether the exclusive jurisdiction of the Federal district courts over maritime claims which

arise out of the operation of merchant vessels for the United States under time charters, is defeated by the circumstance that the claims, instead of being explicitly upon the time charters themselves, are based upon maritime contracts of marine hull insurance which the terms of the time charters required the United States to issue for the amounts and at the premiums fixed by the charters.

STATUTES INVOLVED

The pertinent provisions of the Merchant Marine Act, of the Suits in Admiralty Act, and of the Judicial Code are set forth in the Appendix, *infra*, pp. 20–22.

STATEMENT

The present litigation arises out of the operation of certain merchant vessels for the United States under time charters. The United States bareboat chartered-out some 17 government-owned cargo vessels for operation by the Greek Government. The Greek Government, in turn, time-chartered the vessels back to the United States for an indefinite period which was to run concurrently with the bareboat charters (R. 17, 38).[1] The Greek Government then appointed the United

[1] A bareboat charter is a bailment of a vessel by its owner for operation by the charterer, who mans, victuals, supplies and navigates it, thereby becoming its operator and owner *pro hac vice*. A time charter is a lease of a vessel's entire carrying capacity by an owner-operator.

Greek Shipowners Corporation[2] as its agent in operating the vessels for the United States under the time charters, and executed a power of attorney authorizing the operating agent to perform various functions on its behalf, including the collection of monies due from the United States under the time charters and under the marine hull insurance policies which the United States issued pursuant thereto.

The United States (through the War Shipping Administration) issued these marine hull policies on the vessels in accordance with Article 20B of the time charters (R. 28), which provided that:

> Marine Hull coverage, at the valuation set forth in Part I, shall be placed by the Bareboat Chartered Owner [*i. e.*, the Greek Government] with the War Shipping Administration and a premium at the rate set forth in Part I shall be paid, quarter-annually in advance, by the Bareboat Chartered Owner to the War Shipping Administration (R. 17, 28).[3]

[2] This was a Delaware business corporation organized in 1941 to operate for the account of the owners such vessels as they might deliver to it for operation. It had its principal place of business at New York City (R. 1, 35–36, 38–39).

[3] Each of the vessels had been time chartered to the United States (R. 11). The time charter for the vessel *SS Michael Anagos*, which is Exhibit "A" to the petition, specifies an agreed valuation of $1,860,000 and a marine hull insurance premium of 4% per annum on the agreed valuation of the vessel (R. 17). It is typical (R. 11).

The policies recited "This insurance issued under Section 10, Merchant Marine Act, 1920" (R. 57).[4]

Petitioner, as the receiver of the corporate operating agent (United Greek Shipowners Corporation) filed this suit in the Court of Claims on July 16, 1952. The petition contained twenty-three separate causes of action, embracing (1) claims for losses on the marine hull insurance policies (causes of action 1–19, R. 1–13); (2) claims for charter hire (causes of action 20–22, R. 13–14); and (3) claims for sums alleged to have been disbursed for wages of crews (cause of action 23, R. 15) (R. 1–16, 39). The United States did not answer, but instead moved to dismiss the suit for the reason, *inter alia*, that the Court of Claims lacked jurisdiction of the subject matter because it was within the exclusive jurisdiction vested in the federal district courts under the Suits in Admiralty Act (46 U. S. C. 741 *et seq.*)[5]

The Court of Claims dismissed the petition, holding that petitioner's suit was one which

[4] That section does not permit the Government to issue "commercial" insurance on private operations. It authorizes the creation of "insurance funds" only to insure "any legal or equitable interest of the United States" including its interest "in any vessel which is obligated by contract with the owner to perform any service in behalf of the United States" (46 U. S. C. 869). See *infra*, pp. 11–12.

[5] The motion also questioned petitioner's capacity and authority to file suit in the Court of Claims and his standing as the real party in interest. The Court of Claims found it unnecessary to consider these additional grounds (R. 37, 39–40).

"must, under the provisions of the Suits in Admiralty Act, be brought in the United States district courts" and that "The Suits in Admiralty Act of 1920 withdrew from this court jurisdiction in such cases and vested exclusive jurisdiction thereof in the United States district courts" (R. 39).*

ARGUMENT

1. The decision below is merely a correct application to marine hull insurance claims, arising out of the operation of merchant vessels for the United States under time charters, of the rule heretofore settled by the decisions of this Court that the Suits in Admiralty Act provides a remedy—the exclusive remedy—for all maritime causes of action against the United States, including claims on maritime contracts, arising out of the operation of merchant vessels for the United States. *Calmar Steamship Corp.* v. *United States,* 345 U. S. 446; *Matson Navigation Co.* v. *United States,* 284 U. S. 352; *Johnson* v. *Fleet Corporation,* 280 U. S. 320; *Fleet Corporation* v. *Rosenberg Bros.,* 276 U. S. 202; *Eastern Transportation* v. *United States,* 272 U. S. 675; *M. & J. Tracy* v. *United States,* 111 F. Supp. 956

* The petition for certiorari relates only to the insurance claims. As to the charter hire and disbursement claims, "Dismissal below of other claims, stated as causes of action numbered 'Twentieth' through 'Twenty-Third' in the petition filed in the Court of Claims, is not disputed at this time" (Pet. 4).

(C. Cls.), certiorari denied, No. 213, this Term, October 19, 1953; see *Brady* v. *Roosevelt Steamship Co.*, 317 U. S. 575, 577–579. As this Court has said, "* * * the District Courts are, in our judicial system, the accustomed forum in matters of admiralty; everything else being equal, no efforts should be made to divert this type of litigation to judges less experienced in admiralty." *Calmar S. S. Corp.* v. *United States*, 345 U. S. 446, 455.

In the *Matson* case, 284 U. S. 352, this Court held that jurisdiction over a suit against the United States on a claim under a requisition charter—for increases in salary and bonuses paid the master, officers, and crew of a merchant vessel operated for the United States—rested exclusively in the district courts under the provisions of the Suits in Admiralty Act. It was unnecessary, this Court said, to examine the requisition charter with meticulous care to see that it was in all respects identical with the usual maritime charter party. It was enough "that the right asserted is upon express contract with the shipowner for its operation of the ship for the Government, and stipulates compensation both for use of the ship and for service rendered and expense incurred in its operation and maintenance, all of which undertakings are characteristically within the admiralty jurisdiction." 284 U. S. at 358.

The marine insurance claims in the present case similarly arose out of the operation of mer-

chant vessels for the United States. As required by the time charters, the marine insurance policies were applied for by the Greek Government and were issued by the United States in accordance with, and as integral parts of, the charter arrangements for operating the vessels for the United States. Insurance undertakings are within the long-recognized admiralty jurisdiction. *Insurance Company* v. *Dunham,* 11 Wall. 1, 21; *De Lovio* v. *Boit,* Fed. Case No. 3,776 (C. C. D. Mass.); *North German Fire Insurance Co.* v. *Adams,* 142 Fed. 149 (C. A. 7); *Jeffcott* v. *Aetna Ins. Co.,* 129 F. 2d 582 (C. A. 2), certiorari denied, 317 U. S. 663. The insurance undertakings by the Government incident to the maritime charters for operation of the vessels for the United States are, we must conclude, justiciable only under the Suits in Admiralty Act.

If all of petitioner's claims were expressly based directly upon the charter provisions, or if the petition in the court below disclosed their origin in the charter, the case would fall squarely within the authority of the *Matson* case, *supra.* If the charters had set out the terms of the policies upon which the suit is based, in place of the above mentioned clause (*supra,* p. 3) which virtually incorporates the policies by reference, or if the policies had been annexed to the time charters, the case would equally appear to be governed by the *Matson* case.

The only difference in the present case is that

the time charters provide succinctly and summarily that marine hull coverage shall be placed by the Greek Government with the War Shipping Administration and the premium is to be paid by the Greek Government to the War Shipping Administration. No different case is presented, we submit, merely because of the circumstance that, for the reasons of draftsmanship and convenience, the detailed terms of the insurance required by the charter as part of the overall arrangement for operating the vessels for the United States were physically embodied in separate papers. Nor is it material that petitioner, neither in his petition in the court below nor in his petition for certiorari in this Court, chose to refer to the charter in this connection, except so far as the facts appear from the provisions of the charter itself, which is Exhibit A to the petition in the court below (R. 11–13, 16–35). These are mere formal distinctions in pleading, which are not material, much less controlling. The insurance contracts had their origin in the charter arrangements and were dependent on provisions thereof. Their intimate connection with the charters is critical and cannot be obscured or suppressed; nor can it be denied that these merchant vessels were being operated *for* the United States.[1] Cf. *Lambert Co.* v. *Baltimore & Ohio R. R. Co.*, 258 U. S. 377, 382–3. For this reason, petitioner's abandonment

[1] In the Affidavit in Support of Motion for Call (R. 60, 61), it is admitted by petitioner that "Each of the vessels in question was owned by the United States of America and

in this Court (Pet. 4) of the charter hire and wage claims in his last four causes of action does not avail to destroy the firm tie attaching the marine insurance policies to the charters as specific features thereof. The Court of Claims was fully aware from the record before it of the importance to the Government, as time charterer *for* whom the vessels were operated, that the Bareboat Chartered Owner [the Greek Government] obtain the marine hull insurance from the Government.*

A vessel operated under a time or voyage charter to the United States is plainly operated *"for* the United States" (emphasis added). See *Calmar SS Corp.* v. *United States,* 345 U. S. 446, implicitly approving the opinion of L. Hand, J., in the court below, 197 F. 2d 795, 802 (C. A. 2), on this point; *A. H. Bull S. S. Co.* v. *United States,* 105 F. Supp. 474, 479 (S. D. N. Y.); *M. & J. Tracy* v. *United States,* 111 F. Supp. 956 (C. Cls.), cer-

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bareboat chartered to the Greek Government. The Greek Government, thereupon, time chartered the vessels back to the United States of America."

* The time charter for the *SS Michael Angnos* was Exhibit "A" to the petition in the court below, and was a part thereof for all purposes. Court of Claims Rule 10 (c); cf. *Peoples Natural Gas Co.* v. *F. P. C.*, 127 F. 2d 153, 155–6 (C. A. D. C.), certiorari denied, 316 U S. 700.

Article 20D of the charter provided that all insurance would protect both the United States as time charterer and the Greek Government as Bareboat Chartered Owner, as their interests might appear, and provided for the measure of the Bareboat Chartered Owner's interest in the event of an actual or a constructive total loss (R. 29, 57), underscoring the importance of insurance in the charter arrangement.

tiorari denied, October 19, 1953, No. 213, this Term. Cf. *Matson Navigation Co.* v. *United States,* 284 U. S. 352, 358; *Richfield Oil Corp.* v. *United States,* 106 F. Supp. 1022 (N. D. Cal.), affirmed, 1953 A. M. C. 1826 (C. A. 9). The entire arrangement with the Greek Government (see *supra,* pp. 2–3) contemplated operation *for* the United States. For that reason the bareboat charters were for the same period as the time charters (R. 17).

Petitioner (Pet. 6–7, 21–22) sets up a straw-man when he objects that, as he reads it, the language of the Court of Claims' opinion concerning exclusiveness of remedy appears to apply even when the Suits in Admiralty Act would not authorize suit, rather than to its holding that the Act *when applicable* is exclusive. Obviously, the Court of Claims held only that petitioner's claims arose out of a maritime contract regarding the operation of merchant vessels *for* the United States within the meaning of the Suits in Admiralty Act.[9] It would not otherwise have held that the district courts had exclusive jurisdiction under the Suits in Admiralty Act. Read in con-

[9] The Court of Claims did not stop with "we are of the opinion that plaintiff's action is based on maritime contracts and is therefore a proceeding in Admiralty." It continued, "and must, under the provisions of the Suits in Admiralty Act, be brought in the United States district courts. The Suits in Admiralty Act of 1920 withdrew from this court jurisdiction in such cases and vested exclusive jurisdiction thereof in the United States district courts" (R. 39).

text, and given direction by the grounds of the Government's motion to dismiss and authorities cited in the opinion (R. 37, 39–40), the language of the Court of Claims does not disclaim jurisdiction in that court apart from operation of a merchant vessel "for the United States" within the meaning of the Suits in Admiralty Act. The opinion is premised entirely upon the existence of jurisdiction of all of petitioner's claims under the Suits in Admiralty Act.

2. Petitioner's claims, contrary to his assertions, are not based on marine hull insurance policies of a "commercial" character (Pet. 10, 16, 17, 22). They are based on undertakings by the "insurance fund" authorized by Section 10 of the Merchant Marine Act of 1920 (46 U. S. C. 869) and therefore went to the essence of the time-chartered operation of the vessel for the United States. Such undertakings by the "insurance fund" in connection with merchant vessels which are obligated by the time charter contracts to perform services and be "operated for the United States" come within the clear contemplation of the statutory language of Section 10 of the Merchant Marine Act and Sections 2 and 8 of the Suits in Admiralty Act (*infra*, pp. 20–22).

Section 10 of the Merchant Marine Act of 1920 authorizes the creation of "insurance funds" to insure "any legal or equitable interest of the United States" in any vessel and provides that "the United States shall be held to have such

an interest * * * in any vessel which is obligated by contract to perform any service in behalf of the United States * * *" (46 U. S. C. 869). Section 8 of the Suits in Admiralty Act, in turn, expressly authorizes that judgments entered thereunder may be paid out of the "insurance fund" available therefore (46 U. S. C. 748). For this reason, it was unnecessary in respect of insurance under Section 10 to enact any special jurisdictional provision, as was done in Section 225 of the War Risk Insurance Act of 1940 (46 U. S. C. 1128d), to deal with insurance or reinsurance of a "commercial" character, involving vessels not "operated for the United States" within the Suits in Admiralty Act. See the Government's brief in *De La Rama S. S. Co., Inc.* v. *United States,* October Term, 1952, No. 368, pp. 21, 25–31.

3. There is likewise no substance to petitioner's contention (Pet. 18–20) that reenactment, in the Judicial Code of 1948, of the general jurisdictional provisions for suits against the United States in the district courts and Court of Claims (28 U. S. C. 1346, 1491) destroyed the effect of the previous cases and restored to the Court of Claims the admiralty jurisdiction withdrawn by the Suits in Admiralty Act in 1920. Indeed, the words "or admiralty" found in 28 U. S. C. (1946 ed.) 250 (1)—the general jurisdictional provision for the Court of Claims—were expressly omitted by the draftsmen of the 1948 revision (cf. 28

U. S. C. 1491).[10] See *Thomason* v. *United States*, 184 F. 2d 105, 108 (C. A. 9). In general, no radical or substantive changes were intended by the revision. See *Ex parte Collett*, 337 U. S. 55, 62; *Prouty* v. *United States*, 94 F. Supp. 320, 322 (D. N. H.). Specifically, the revisers took a rather narrow view of the admiralty jurisdiction of the Court of Claims. See House Rep. 308, 80th Cong., 1st Sess., p. A138; cf. *United States* v. *Nat. City Lines*, 337 U. S. 78, 81.

The more specific jurisdictional provision is that of the Suits in Admiralty Act, and must prevail over the general jurisdiction of the Court of Claims over suits founded on contracts with the United States which is now conferred by 28 U. S. C. 1491.[11] The Court of Claims has no greater powers than the district courts; it can grant no relief unavailable in the district court in which

[10] Section 250 (1) provided in pertinent part that the Court of Claims should have jurisdiction over

"First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, *or admiralty* if the United States were suable: * * *" [Emphasis added.]

[11] For the same reason in *De La Rama S. S. Co.* v. *United States*, 344 U. S. 386, 391, since Section 225 of the War Risk Insurance Act (46 U. S. C. 1128d) was the more specific, the Court did not have to consider the Suits in Admiralty Act, urged by the Government in the last point of its brief as an alternative basis for jurisdiction. However, the Court noted

libelant resides or has its principal place of business, or in which the vessel is found.

4. There is no conflict of decisions and the cases principally urged by petitioner as conflicting in principle, do not help him. In *United States* v. *Caffey*, 141 F. 2d 69 (C. A. 2), certiorari denied, 323 U. S. 750, particularly relied on by petitioner (Pet. 6, 17), the court denied that the United States was liable to a third person under the *Public Vessels Act* for a collision with a vessel lend-leased to the British Government, where the vessel was out of operational control of the United States and a part of the Royal Navy. That case has no bearing on the liability of the United States under the *Suits in Admiralty Act* as time charterer of a "sovereign owner" (the Greek Government) operating merchant vessels for the United States, where the alleged breach is one for which the United States, if any one, is responsible. *United States* v. *Atlantic Mutual*

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the desirability of access to the district court for holders of war risk policies. The same considerations apply to marine insurance. See also *Levine* v. *United States*, 112 C. Cls. 187, certiorari denied, 336 U. S. 936.

The 1940 amendment to the Merchant Marine Act of 1936 authorized (1) marine insurance and reinsurance against loss or damage by the risk of war and (2) reinsurance against loss or damage by marine risks. Neither type was limited to vessels operated by or for the United States. Act of June 29, 1940, 54 Stat. 689, 46 U. S. C. 1128, as amended. The policies in question in the present case were for *insurance* against *marine risks* alone on vessels operated for the United States. Consequently, suit could not have been brought under Section 225 of the War Risk Insurance Act.

Ins. Co., 298 U. S. 483, is equally not in conflict with the decision of the court below. Plaintiff's only remedy there was under the Tucker Act for the contract claim arose out of the operation by the United States of *a public vessel,* as an army transport and not as a merchant vessel. The vessel reached its destination on January 19, 1919 (the date the cause of action accrued), long before the date a cause of action had to arise to be covered by the Public Vessels Act (April 6, 1920) (46 U. S. C. 781).[12]

Alcoa S. S. Co. v. *United States,* 338 U. S. 421, a Tucker Act case, involved a claim for freight on small shipments of goods Alcoa carried for the United States on government bill of lading. The vessel was not operated by or for the United States. The question of exclusive jurisdiction under the Suits in Admiralty Act was not stressed because of the fact that the original freight moneys were first paid and the amounts were later withheld from other sums due Alcoa (338 U. S. at 423). It is doubtful that such a suit for money had and received to the plaintiff's use comes within the requirement of the Act that "if such cargo were privately owned and possessed, a proceeding in admiralty could be main-

[12] *Eastern Steamship Lines, Inc.* v. *United States*, 112 F. Supp. 167 (C. Cls.), and *The Progressive*, 275 Fed. 360 (E. D. N. Y.) also involved public vessels operated exclusively as such. *The Progressive* involved a destroyer. The decision therein was rendered July 21, 1921, almost four years before the Public Vessels Act was enacted in 1925.

tained at the time of the commencement of the action herein provided for * * *."[13] Of this same group is *Eastern Transportation Co.* v. *United States,* 159 F. 2d 349 (C. A. 2), where timely suit was brought for $857.45 for freight money withheld by the Government.

The other cases relied on by the petitioner involved suits in the district court where the question whether the Tucker Act, the Suits in Admiralty Act, or the Public Vessels Act afforded the court its jurisdiction of the case merely "lurk[ed] in the record" (cf. *Webster* v. *Fall,* 266 U. S. 507, 511) since the amounts were under $10,000, the suits were timely, and nothing of

[13] It appears from the district court opinion (*Alcoa SS Co.* v. *United States*, 80 F. Supp. 158 (S. D. N. Y.)), that the amounts were withheld almost three years after they were first paid. The Suits in Admiralty Act period of limitations is two years (46 U. S. C. 745). Jurisdiction over claims for freight moneys on cargo carried for the United States on private vessels operated for private account is unrelated to the issues presented by the petition here, which involves a claim arising out of the operation of a merchant vessel for the United States. The district court in the *Alcoa* case took jurisdiction under the Tucker Act on the authority of *American President Lines* v. *United States*, 75 F. Supp. 110 (S. D. N. Y.), an interlocutory order from which no appeal could be taken. That proceeding is still pending. Admittedly, the government-owned cargo side of Suits in Admiralty Act jurisdiction has not received the same extensive consideration as the merchant vessel phase involved in the instant case. This may be explained in large measure by the fact that freight money claims brought within two years for amounts less than $10,000 may be brought in the district court irrespective of whether jurisdiction is grounded on the Suits in Admiralty Act or the Tucker Act (28 U. S. C. 1346 (a) (2)).

consequence could hinge on the determination of jurisdiction, with the result that the proper jurisdictional basis was of merely academic interest.[14] Thus, *The Everett Fowler,* 151 F. 2d 662 (C. A. 2), was a case where the Government, when impleaded by the charterer in the owner's admiralty suit for negligence, was referred to as "consignee" of a barge not operated for the United States, and it was held that although jurisdiction was invoked under the Public Vessels Act (46 U. S. C. 781–790) the label could be disregarded and the admiralty impleader treated as a Tucker Act suit "for the breach by the United States, as consignee, of its contractual obligation to the charterer." *Admiral Oriental Line* v. *United States,* 86 F. 2d 201, 203 (C. A. 2), was a case in which it was held that the causes of action were not of admiralty jurisdiction and therefore an agent could not sue the United States under the Suits in Admiralty Act but that jurisdiction could be taken at law and so against the United States under the Tucker Act.[15] *United States* v. *Tacoma Oriental Line,* 86 F. 2d 363, 369 (C. A. 9), is completely inapposite.

5. The question as to the forum for the litigation of marine insurance claims in connection

[14] Cf. *Calmar S. S. Corp.* v. *United States,* 345 U. S. 446, 455; *Cory Bros. & Co.* v. *United States,* 51 F. 2d 1010, 1012–1013 (C. A. 2).

[15] The test is whether the undertaking is "characteristically within the admiralty jurisdiction." See *Matson Navigation Co.* v. *United States,* 284 U. S. 352, 358.

with the time-chartered operation of merchant vessels for the United States is not of large importance, even if the answer to the question were doubtful. And, as we have shown, the question is not doubtful; the opinions of this Court in *Matson Navigation Co.* v. *United States,* 284 U. S. 352, and *Calmar S. S. Corp.* v. *United States,* 345 U. S. 446, are fully dispositive.[16] This Court's decision in *De La Rama S. S. Co.* v. *United States,* 344 U. S. 386, rules virtually every pending insurance case, and we know of only one remaining litigation even remotely similar to the present case.[17] Additional cases of the present type are unlikely. More than six years have elapsed since vessels time-chartered by the United States during World War II were "redelivered".[18] We are informed that no insurance is being written currently under Section 10 of the Merchant Marine Act of 1920.

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[16] On October 19, 1953, this Court denied certiorari in *M. & J. Tracy* v. *United States*, No. 213, this Term, 111 F. Supp. 956 (C. Cls.), where similar contentions were made; the petition in this case discloses no reason for a different disposition here.

[17] *United States Lines Co.* v. *United States*, Court of Claims No. 140–53, Southern District of New York No. Ad. 178–311. Even that case may fall within this Court's decision in *De La Rama, supra.*

[18] The United Greek Shipowners Corporation did not act as agent after October, 1946, and the losses were sustained during the period that it operated the vessels (R. 1–2).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1953.

APPENDIX

The Suits in Admiralty Act of March 9, 1920, 41 Stat. 525, 46 U. S. C. 741, *et seq.* provides in pertinent part as follows (as it appears in 46 U. S. Code):

§ 741 [Sec. 1 of the Act]. *Exemption of United States vessels and cargoes from arrest or seizure.*

No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this chapter shall not apply to the Panama Railroad Company.

§ 742 [Sec. 2 of the Act]. *Libel in personam.*

In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is

employed as a merchant vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

§ 748 [Sec. 8 of the Act]. *Payment of judgment, award, or settlement.*

Any final judgment rendered in any suit herein authorized, and any final judgment within the purview of sections 744 and 747 of this title, and any arbitration award or settlement had and agreed to under the provisions of section 749 of this title, shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor;

otherwise there is appropriated out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

28 U. S. C. § 1491 provides as follows:

§ 1491. *Claims against United States generally*

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:

(1) Founded upon the Constitution; or

(2) Founded upon any Act of Congress; or

(3) Founded upon any regulation of an executive department; or

(4) Founded upon any express or implied contract with the United States; or

(5) For liquidated or unliquidated damages in cases not sounding in tort.

Section 10 of the Merchant Marine Act of 1920, 46 U. S. C. 869, as amended, provides as follows:

The commission may create out of insurance premiums, and revenue from operations and sales, and maintain and administer separate insurance funds which it may use to insure in whole or in part against all hazards commonly covered by insurance policies in such cases, any legal or equitable interest of the United States (1) in any vessel constructed or in process of construction; and (2) in any plants or property in the possession or under the authority of the commission. The United States shall be held to have such an interest in any vessel toward the construction, reconditioning, remodeling, improving, or equipping of which a loan has been made under the authority of this act, in

any vessel upon which it holds a mortgage or lien of any character, or in any vessel which is obligated by contract with the owner to perform any service in behalf of the United States, to the extent of the Government's interest therein.

U. S. GOVERNMENT PRINTING OFFICE: 1933